give a sufficiently wide berth when overtaking the cyclist.

We accordingly dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Murphy & Dunbar.*

RANJIT SINGH v. JASWANT KAUR

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) July 22, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 20 of 1970]

Family Law — Maintenance — Application by wife for maintenance — Offer by husband to take back wife — Whether, wife has good grounds for refusing to go and live with husband — Married Women and Children (Maintenance) Ordinance, 1950.

This was an appeal against the decision of the High Court, which had allowed an appeal from a magistrate's court and had ordered the appellant to pay maintenance to the respondent.

Held, dismissing the appeal: in this case there was no evidence to show that the wife had deserted the husband or had refused to go and live with him before the proceedings commenced. The husband could not have been serious or genuine in his offer to take the wife back after the proceedings had commenced and in the circumstances the wife had good grounds for refusing to go and live with him.

Case referred to:-

(1) *Cheong Hooi* v. *Tee Ngi* [1958] M.L.J. 83.

FEDERAL COURT.

Karpal Singh for the appellant.

Joginder Singh for the respondent.

Azmi L.P.: Ranjit Singh (husband) and Jaswant Kaur (the wife) were married on 20th April 1957 in accordance with Sikh rites and customs. Two children were subsequently born of the marriage, namely a son on 20th April 1958 and a daughter on 20th February 1959. The wife swore a complaint in the magistrate's court against her husband for failing to maintain her and her two children. The learned magistrate ordered the husband to pay maintenance for the children but dismissed the wife's claim for maintenance.

According to the evidence of the wife, 3 months after the marriage he joined the police field force and worked in Kuala Lumpur and he used to visit her at her house once a week. This went on for about 7 months. During her stay in Kuala Lumpur her parents and brother supported her and he never maintained her. About a month before the birth of the second child he was posted to Ipoh. He never visited her for about 13 months. In April 1960 she went to Ipoh and stayed in the married men's quarters but apparently was not living together with him because according to her he only came once in two or three days to change his clothes. Where was he then staying? Perhaps with his parents who were then living in Ipoh. Finally he sent her back to her parents' house in 1960 because according to him he had to go into the jungle on duty and this according to the wife was not true. In June 1960 he was transferred to Kulai and on the way dropped at Kuala Lumpur to see her. From that time until 1963 he only visited her once. He refused to take her back and talked about separation. After 3 years in Kulai he was transferred to Seremban where he stayed for 2 years and from there he was transferred to Ipoh for a month and then to Alor Star. Her story was that though she made attempts to see him he refused to see her. There were also attempts by her relations to bring them together but that also failed. Finally in 1968 she received a letter from his lawyer Exh. P. 1. In that letter the solicitor informed her that according to her husband "there has been a total and complete breakdown of the marriage and that there was not even the remotest possibility of reconciliation and in the circumstances, asked her if she would agree to enter into a deed of separation that would for all intents and purposes dissolve the marriage." She refused to comply with the request and soon after laid this complaint against him for maintenance.

In answer to cross-examination she admitted that from April 1957 up to June 1960 their relationship was good and they lived as husband and wife. But however, she expressed very strongly that she would not now go back to him even if he still wanted her because according to her she had suffered enough. She said she took this action because of Exh. P. 1.

Chief inspector Balwant Singh, who knew the parties, though related to neither of them, said that the husband was working with him from April to November 1959. The husband told him in April 1959 about his matrimonial relationship. Subsequently when he heard from the wife's brothers that the husband had left her he tried to reconcile them, but when he asked the husband to take his wife back he refused. He made several attempts but they were fruitless.

Another witness Chandra Singh P.W. 2 said that in 1960, he visited her in the police barracks in Ipoh on three occasions and the husband was not at home. She appeared to be feeling lonely as the husband had not returned home. He gave her vegetables which she needed as a diet.

The wife's brother Jaswant Singh also gave evidence. He told of his attempt to bring the couple back together.

The appellant also gave evidence. He admitted that at the beginning of the marriage everything was quite all right though there was some misunderstanding between them. He used to visit her when he was in Kuala Lumpur. When he was transferred to Ipoh she stayed with him in the barracks. When he was sent to Kuala Lumpur for training for a month at the police depot she refused to go with him. When he returned to Ipoh and stayed with her in the same house he discovered that a man named Hira Singh used to pay regular visits to the house. He told his wife that he did not want this and they quarrelled. Then she returned to Kuala Lumpur and refused to live in Ipoh any more. When he went to see her off at the railway station, she told him that she could get him transferred

elsewhere. He was transferred to Kulai and for that he wrote her P. 6 thanking her for that. 12 days later his wife went to her parents' house which surprised him. According to him his transfer to Kulai was the result of the work of his brother-in-law. In answer to cross-examination the husband said that he was always willing to take her back for the last 8 years and would still be willing to do so but she had always refused. He admitted that he did not give her any money during their separation.

On that evidence the magistrate expressed the view that there was some misunderstanding between the two which caused them to live separately for the last 9 years and also that attempts to bring them together had failed. The learned magistrate then went on to say that he found both parties not "in any way earnest," and in the circumstances he could not make an order for maintenance for the wife.

In his written grounds of judgment the learned magistrate again expressed his view in the following terms: —

"I find both the parties have shown their obstinate attitude towards each other and they were not in any way sincere in their dealings in reconciling their differences. Moreover they have been living apart for the last 9 years and there is no possibility of applicant (wife) to go back and stay with the respondent (husband), I feel it is unjustifiable to make the respondent to maintain her any further.

In addition to the above grounds, I am entirely in agreement with the arguments put forward by the respondent's counsel in his written submission marked 'A' attached to the notes of evidence.

On the above grounds I am of the opinion that the applicant is not entitled to any maintenance from the respondent."

The wife appealed to the High Court.

Several grounds of appeal were argued.

The learned judge then went on to say in his view on the evidence the learned magistrate was wrong in holding that "the parties having lived apart for so many years and that there being no possibility of her returning to the husband it was unjustifiable to make the husband maintain the wife." The learned judge went on to say that the unreasonable attitude of the husband and the efforts made by the wife at reconciliation were abundantly clear from the evidence of the independent witness Balwant Singh and Chandra Singh. For those reasons the learned judge allowed the appeal.

Before us, the appeal was argued on several grounds. First, it was argued that the learned judge was wrong in accepting the testimony of the wife and that of Balwant Singh and Chandra Singh despite their material discrepancies in their evidence. I am inclined to agree with the learned trial judge that the evidence of the chief inspector would support the view taken that there were attempts at reconciliation, made by the wife and her family and the husband's rejection to take her back. The husband's attitude in this respect is sufficiently confirmed further by his lawyer's letter Exh. P. 1. In my view the learned trial judge was right in coming to the conclusions he made and I would therefore dismiss this ground of appeal.

His next ground of appeal was that it was the wife who deserted the husband without sufficient reasons. The learned magistrate unfortunately had failed to make any finding of facts on this question though it was contended in the written submission that it was the wife who deserted the husband and for that reason she was not entitled to maintenance. In my view there are facts upon which this court may make a finding for the purpose of this ground. If I understand the facts correctly, the wife returned to her parents' house at the request of the husband. The evidence would show that having left his wife at her parents' house he himself made no serious attempts to take her back to live with him. Notwithstanding what he said at the trial there was no doubt that he found this arrangement very convenient to him since he did not have to support her. He admitted that he never supported her while she was at her parents' house.

It was also apparent from his lawyer's letter sent to the wife that he was the first to suggest that a deed of legal separation be made. In my view therefore it is impossible to accept the honesty of the husband that he was genuinely willing to take his wife back. In my view the evidence would show that this was not a case of desertion by the wife or to show that she was unwilling to go back and live with him.

The last ground of appeal was that the learned trial magistrate failed to comply with the mandatory provisions of section 5 of the Married Women and Children (Maintenance) Ordinance 1950 and as such the learned appellate judge erred in law in not ordering a new trial.

Section 5 of the Married Women and Children (Maintenance) Ordinance of 1950 provides as follows: —

"5(1) If any person, against whom an order has been applied for or made for the maintenance of his wife, offers to maintain his wife on condition of her living with him, and his wife refuses to do so, the court shall consider any grounds of refusal stated by such wife, and may make or enforce the order aforesaid, notwithstanding such offer, if it is satisfied that such person is living in adultery or for any other reason it is just so to do.

(2) No wife shall be entitled to receive an allowance from her husband under the provisions of this Ordinance if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband."

I agree that the learned magistrate had failed to make a finding of fact (1) whether it was the wife who refused to live with her husband and (2) if she did so refuse, to consider her grounds of refusal. The learned judge, however, considered this question and pointed out the learned magistrate's failure to consider it. The learned judge then went on to say as follows:

"Having considered the evidence I think the finding of the learned magistrate that the parties have shown their obstinate attitudes and were not sincere in their dealings in reconciling their differences was manifestly against the weight of the evidence. The unreasonable attitude of the respondent and the efforts made by the appellant at reconciliation, I think, is abundantly clear from the evidence of the independent witness, Balwant Singh and also from the evidence of P.W. 2 Chandra Singh."

According to *Chong Hooi* v. *Tee Ngi*[1] where an offer is made by the husband to maintain his wife on condition of her living with him, the court should have

considered whether the offer was genuine and if the wife refused, whether she has sufficient reasons for refusing to live with her husband. In that case the learned magistrate failed to make the necessary finding of facts and the appellate court sent the case back for re-trial.

With respect, however, in the present case it would not be necessary to send it back for re-trial, for the purpose of finding out whether the wife had refused to live with the husband and if so her reasons for doing so. As I have already stated in dealing with the previous grounds of appeal, there was no question before these proceedings commenced of the wife refusing to go and live with the husband. For her refusal to go and live now or rather after the proceedings began, in my view she had good grounds for refusing to do so. The evidence showed that they had been living too long apart. There was no serious attempt during that period by the husband to take back his wife or his children, all of whom had been living with the wife's parents without any support from him. Notwithstanding what he had stated before the magistrate it was evident that he could not have been serious or genuine in his offer to take her back. On the contrary until the proceedings had started he had all the time wanted a separation from his wife and to use his own words a separation that "would for all intents and purposes dissolve the marriage." In the circumstances, it is my view that the wife had good grounds for refusing to go and live with him now.

I would therefore dismiss the appeal with costs.

Suffian and **Ali F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.; Joginder Singh & Co.*

DR. NG AH KOW & ANOR. v. DR. LOW SHIK AUN

[O.C.J. (Yong J.) July 31, 1970]

[Kuala Lumpur — Originating Summons No. 376 of 1969]

Arbitration — Application to enforce summarily an arbitrator's award — Validity of award doubtful — Arbitration Ordinance, 1950, s. 13.

This was an application for leave to enforce summarily an arbitrator's award given in favour of the applicants and against the respondent.

Held: in this case the validity of the award made by the arbitrator was so doubtful and the case was so far from clear that leave to enforce the award summarily should be refused and the successful parties to the award should be left to their remedy to enforce it by action.

Cases referred to:-

(1) *Re Boks & Co. and Peters Rushton & Co. Ltd.* [1919] 1 K.B. 491.

(2) *Grech* v. *Board of Trade* (1923) 92 L.J. Rep. 956.

(3) *Union Nationale des Co-operatives Agricoles de Cereales* v. *Robert Catterall & Co. Ltd.* [1959] 1 All E.R. 721 at p. 725.

The following cases were also cited in argument: *Tandy* v. *Tandy* (1841) 9 Dowl. 1044; *Porter* v. *Porter* (1921) 55 I.L.T. 206; *Boodle* v. *Davies* (1835) 3 A. & E. 200; *Seccombe* v. *Babb* (1840) 6 M. & W. 129; *Price* v. *Popkin* (1839) 10 A. & E. 139; *Ross* v. *Boards* (1838) 8 A. & E. 290; *Wood* v. *Wilson* (1835) 2 C.M. & R. 241; *Belfield* v. *Bourne* [1894] 1 Ch. 521.

ORIGINATING SUMMONS.

Lim Kean Chye (*T. P. Wong* with him) for the applicants.

P. Mooney for the respondent.

Cur. Adv. Vult.

Yong J.: This is an application under section 13 of the Arbitration Ordinance 1950 for leave to enforce summarily an arbitrator's award given in favour of the applicants and against the respondent.

By a partnership agreement dated May 1, 1968 the respondent a medical practitioner practising under the name of "S.A. Low Clinic and Surgery" agreed to take into his firm the applicants as his partners and to sell to them 50% of his interest at the price of $37,500 of which $5,000 was paid and the balance to be paid by monthly instalments.

Before the instalments could be completely paid off this agreement was superseded by a second partnership agreement whereby one Dr. Lim was admitted as an additional partner into the firm under certain terms and conditions.

It is not disputed that under this second agreement the applicants, the respondent and Dr. Lim respectively held 44%, 36% and 20% of the interest in the firm and by paragraph (8) thereof, the applicants agreed to pay the respondent the sum of $44,000 of which $16,500 had been paid on or before the execution of the agreement and the balance of $27,500 was to be paid by monthly instalments. The first instalment of $1,500 was paid on August 15, 1969 leaving a balance of $26,000 still due and owing by the applicants to the respondent on the crucial date of September 19, 1969 when the partnership broke up and its business closed down.

Before its breaking up Dr. Lim on August 29, 1969 retired from the partnership and sold half of his 20% interest to the applicants and the remaining half to the respondent so that as from that date the applicants became owners of 54% and the respondent 46% of the shares in the firm.

The partnership was doomed to failure from the beginning. If the partners had thought a little more of their integrity and a little less of self-interest the partnership might have survived. However that was not to be. The retirement of Dr. Lim did not ease the tension that existed between the remaining partners. There were charges and counter-charges against each other for pilfering cash from the till and drugs from the store. The bickering of the partners and the smouldering fire between them finally erupted into a violent flame on September 19, 1969 when Dr. Lee was locked in and her husband Dr. Ng was locked out from the clinic by Dr. Low. In order to protect herself from Dr. Low, as she claimed, she relocked herself